And I will and intend on looking into that matter. This is not the subject matter of the hearing. I probably shouldn't even be saying it, but at first blush, I feel that the way to get at, at least a part of it is through grand jury reform, which I think is long overdue and is going to be the subject of hearings in our subcommittee when we get under way.

But I share your concern and I promise you that I will keep the chairman informed of our activity there, and if and when we get to that point, invite the chairman to come and give us the benefit of his thoughts on the matter.

Mr. MURPHY. I appreciate that, Senator, and again, Senator Joseph Biden, we thank you for your testimony today and your valuable help to this committee in its deliberations on this legislation.

Thank you.

Senator BIDEN. Thank you very much, and thanks for waiting for me, I appreciate it.

Mr. MURPHY. Our next witnesses will be two prominent scholars and professors from Columbia University Law School, Professor Schmidt and Professor Edgar. These gentleman are the authors of an exhaustive and authoritative article on the espionage laws. They are the acknowledged scholarly experts on this topic.

We are very glad to have their testimony, and we are lucky to have it since they experienced some difficulties getting out of New York City to be with us here today.

And being the Representative from Chicago, I want to say, I want to congratulate you for getting out, because I don't know if I can get in or out of Chicago.

STATEMENT OF HAROLD EDGAR AND BENNO SCHMIDT, JR., PROFESSORS OF LAW, COLUMBIA UNIVERSITY

Mr. SCHMIDT. Thank you, Mr. Chairman.

I am Benno Schmidt, and my colleague Harold Edgar is on my right. We are grateful for the invitation to meet with you and for your interest in our views. We have a written statement which, with your permission, Mr. Chairman, we would like to include in the subcommittee's hearings.

Mr. MURPHY. Without objection, it will be included in the record.

[The prepared statement of Harold Edgar and Benno Schmidt, Jr., follows:]

STATEMENT OF HAROLD EDGAR AND BENNO SCHMIDT, JR., PROFESSORS OF LAW, COLUMBIA UNIVERSITY, ON REVISION OF THE ESPIONAGE ACT AND OTHER NATIONAL DEFENSE INFORMATION PROPOSALS

INTRODUCTION

Espionage and revelation of information relating to military affairs, foreign policy, and national security are among the most difficult concerns of federal criminal law. Statutes aimed at protecting defense secrets from disclosure must deal with spying, with the fidelity of government employees to executive policies of secrecy, and with the rights and duties of newspapers and the rest of us to engage in or refrain from discussing matters that may be critical to informed democratic policy choices and yet harmful to defense or foreign policy initiatives if disclosed. Beyond the inherent complexity of the problems, revision of this area of law poses special challenges. The main difficulty stems from the extreme confusion of existing law. The present espionage statutes are incomprehensible on the problems of publication of defense information and preliminary information gathering and retention by reporters and news sources. "Leaks" of defense information by government employees are likewise left in a state of utter statutory confusion. And, as applied to classical espionage, the current statutes are inadequate. The range of information protected from spying is too narrow. Moreover, in demonstrating that spies have violated these statutes, the government may be required to show in open court the harm to security interests that has been caused by the spying in question, a requirement that may entitle further compromises of secrecy interests, and even inhibit prosecution.

In the task of revision, Congress can find no guidance in recent revision of state penal codes because these problems are not addressed in state criminal law. Neither can Congress derive benefit from sustained judicial attention to the problems of protecting defense-related information. Virtually no judicial consideration has been given to these problems outside the area of classical espionage, where the pressure for expansive readings of the existing statutes is very great.

We respectfully submit that revision of the espionage statutes will not be successful unless Congress recognizes two difficulties. First, Congress today must understand what led past Congresses to adopt such confusing statutes. Understanding the causes of confusion in present law may enable this Congress to avoid confusion in revision. Second, the range of quite different problems which these statutes must face must be recognized; the notion of unitary provisions designed to deal at once with spies, government employees, and journalists should be abandoned. A number of the important proposals of recent years would both perpetuate the confusion of existing law, and fail to take account of the complexity of the subject.

THE CONFUSION OF EXISTING LAW

The present espionage statutes include both narrow and very broad prohibitions. Exceedingly broad and amorphous provisions have been on the books since 1917, but doubts as to the coverage of the broad provisions has led to the adoption of several narrow statutes designed to deal with specific types of disclosures.

The broad prohibitions are found in sections 793 and 794 of Title 18. Subsections 794(a), 793(a) and (b) collectively make criminal gathering for and communicating to foreigners "information relating to the national defense" if done with "intent or reason to believe that [the information] is to be used to the injury of the United States or to the advantage of a foreign nation." Subsection 794(b) prohibits, in time of war, publishing, or otherwise-communicating, national defense information with intent to communicate it to the enemy. Subsections 793 (d) and (e), by far the most confusing provisions, prohibit "willful" communication of national defense documents and information to persons 'not entitled to receive it," as well as their unlawful retention.

The complexities of finding meaning in these provisions led us to an analysis of forbidding length. Our article is available for those who wish to consider the grounds for our conclusions about the reach of the current statutes.[1] In brief, we found that these broad espionage statutes were enacted after legislative debates and amendments which are fairly read as rejecting criminal sanctions for well-meaning publication of information, no matter what damage to national security might ensue and regardless of whether the publisher knew that a consequence of disclosure would be damage to national security. Read in the light of Congress' intent, the broad statutes should not apply either to publication or to conduct preliminary thereto, such as gathering information or leaking it to the press, if the actor has the usual motivation of informing the public or influencing policy. We recognized, however, that the language of sections 793 and 794 must be strained not to cover publication of a defense-related information preliminary to every conceivable publication of defense matters. This discrepancy between Congressional intent and the apparent broad scope of the general espionage statutes results from certain unfortunate and recurrent characteristics of Congressional action in this area, from the original 1917 legislation to the present.

Although broad statutes present a minefield of interpretation problems, these

[1] Edgar and Schmidt, "The Espionage Statutes and Publication of Defense Information," 73 Columbia Law Review 929 (1973).

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are the key issues. First, 794(b) punishes wartime publication of defense information with "intent" to communicate to the enemy. May such an intent be inferred from general publication by a newspaper whose employees act with knowledge that the enemy will read the newspaper? We thought not.

In 1917 when the Wilson Administration proposed a comprehensive set of statutes designed to protect defense information during World War I, the proposed statutes contained two sweeping provisions for executive information control. One was a proposal to give the President power to censor prior to publication, or punish after the fact (exactly which was never resolved), publication of defense information in violation of Presidential directives. This provision was firmly rejected by Congress after much discussion of the value of publication of national security information to informed policy choice in a democracy. Enacted in its place was the prohibition now codified in 794(b). To give effect to Congress' rejection of what was then known as "the censorship proposal," we concluded that the intent formulation of 794(b) must be read to require a purpose to communicate to the enemy. Yet the result of this reading is that the nation's only explicit prohibition on publication is so limited as to be, in practical effect, a nullity.[2]

Second, 794(a) prohibits communication of defense information to foreigners, and 793(a) and (b) prohibit gathering information, if done "with intent or reason to believe that the information is to be used to the injury of the United States, or to the advantage of any foreign nation." A reporter who gathers defense information for publication would seem to violate 793(a) and (b), and yet Congress decided in 794 that newspapers should not be punished for publishing defense information in the interests of informed national debate.

A troublesome question of interpretation is therefore raised by these offenses: The language of 793(a) and 793(b) seems applicable to gathering of defense information with publication in mind, if there is "reason to believe" that the publication will advantage a foreign nation. Yet the Congressional intent to allow newspaper publication of defense-related matters would be frustrated by this meaning, since gathering information must precede publication.

Finally, the meaning of subsections 793(d) and 793(e) is especially problematic. The subject of much obiter discussion in the opinions of several Justices in the Pentagon Papers decision, 793(e) prohibits anyone in unauthorized possession of any document or note relating to the national defense from delivering or communicating it "to any person not entitled to receive it." The same subsection also prohibits the willful retention of any tangible defense information and the failure to deliver it to the officer of the United States entitled to receive it. Section 793(d) is similar but applies to lawful possessors. The legislative history of these provisions indicates that Congress did not understand them to make criminal conduct done for purposes of publication. But how they are to be narrowed to effectuate this legislative intention is a mystery. Unlike the other subsections, they do not expressly require that the actor be motivated by a desire to injure the United States or advantage foreign nations. It is no surprise that various interpretation of the scope of these statutes have been advanced in Congressional hearings in recent years.

Existing law also includes several narrow provisions not subject to the same confusions. These provisions are limited either to especially sensitive categories of information prohibited from disclosure, or to particular classes of persons covered. For example, section 952 is narrow in both respects, in that it prohibits only federal employees from divulging only matters or codes transmitted between foreign countries and their diplomatic missions in this country. Section 798, on the other hand, applies to everyone, but covers only revelation of communications intelligence and cryptographic information. The reverse pattern appears in section 783(b) of Title 50, which covers only current Government employees, but makes criminal their divulgence of any classified information, whether classification was warranted or not, to an agent of a foreign government or a member of any Communist organization.[3]

[2] Narrow prohibitions on publication of specific categories of sensitive information, such as cryptography and communications techniques, appear in subsequent statutes such as sections 798 and 795.

[3] Although there are serious policy questions posed by the reach of these statutes, they are at least understandable. If a Government employee provides classified information to a reporter, the employee is not in violation of section 783(b), unless the reporter is a foreign agent or a member of an officially designated Communist organization. On the other hand, disclosing properly classified cryptographic information to a reporter would be a violation of section 798, although there might be first amendment defenses available.

The current espionage statutes are a product of serious tension between the executive and the legislative branches about the proper scope of laws forbidding disclosure of national defense information. Congress has consistently refused to adopt sweeping executive proposals, no doubt in part because Congress relies on general publications for much of the information about foreign and military affairs that enables it to exercise oversight in these areas over a sometimes secretive executive. Yet, the espionage statutes originated in proposals from executive branch, and Congress has never attempted to formulate legislation of its own. Instead, Congress has tended to chop off certain executive proposals and enact others pretty much as submitted, in some cases enacting only part of an integrated package of legislation which becomes extremely difficult to understand, if not down-right meaningless, when severed from the whole.

For example, the 1917 proposals of the Wilson Administration included an authorization to the President to designate anything as defense information, which only duly authorized federal employees would be entitled to know. This provision, however, was rejected. As a result, the espionage statutes describe no process for determining who is "entitled" to receive defense information. In its absence, it is arguable that § 793(d) and (e) should be regarded as a nullity, because "entitlement" is at the heart of both the communication and retention offenses of § 793(d) and (e). The President's proposed power to create "entitlement" was struck, and the present system of executive classification cannot easily be used in its stead. Congress has repeatedly refused to place criminal sanctions behind the classification system. While this is only one of the number of confusions in existing law, it, like others, have resulted from partial acceptance and partial rejection of integrated proposals formulated within the executive branch.

Another lesson to be extracted from the confusion of existing law is the difficulty of dealing in a single statutory section with all forms of information disclosure. The 1917 debates are a welter of confusion in large part because of the continued mixing together of the problems of espionage, employee breaches of official secrecy orders, and newspaper publication. Sections 793 and 794 cover everyone and all defense information, and make distinctions between spying and well-meaning publication only through cumbersome and opaque descriptions of mental states. The result is all or nothing prohibitions which either leave publication without significant restraint, or subject it to sweeping prohibitions appropriate to spying but not to concerned debate about national policy.

SUGGESTIONS FOR REVISION

The initial question the Committee must address is whether to attempt comprehensive revision of the espionage laws, or to content itself with selective treatment of currently perceived problems of substantive coverage—e.g., protection of agents' identities—and the desirability of special procedures for espionage trials. We recognize the advantages of modest goals. The current espionage laws may be hopelessly confusing, but we have lived with them for 60 years. Any effort to clarify them will release enormous tension between competing values of secrecy and open public discussion. The contest between these values may be so intense that finding stable accommodation is impossible, and the contest may undercut the entire effort to achieve federal penal reform, a national goal for over a decade. We believe this has been the experience of the Senate in considering controls on national security information. The proposed treatment of espionage and related matters in S. 1, and the Nixon Administration proposal, S. 1400, was so controversial because of its consistent preference for security over the values of debate that it made some critics apprehensive about the entire effort to revise federal criminal law. In the end, the only way of dealing with the issue was to bypass it entirely. The bill that passed the Senate last year, S. 1437, simply reenacted current law on espionage.

Despite the attractions of a narrow focus, we are persuaded that comprehensive revision, undertaken in conjunction with the on-going effort to pass an up-to-date federal penal code, is preferable to maintaining current law with new additions. In the first place, the creation of narrow provisions superimposed on an opaque general law is the approach that has been used in the past. It is in large part responsible for the present confusion concerning the law's scope. What inferences about the coverage of current law should be drawn from the addition of yet another layer of offenses and procedures treating activities that seem already criminal, More generally, the tendency to treat penal problems by ad hoc

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additions rather than revision accounts for much of the disarray of federal penal law, and should be avoided. To be sure, any comprehensive treatment requires compromise, but compromise may be easier to achieve in a broad framework of overall revision. Moreover, we see growing awareness that achieving legislative control over intelligence activities requires that employee misconduct must be made punishable, without the threat of disclosure of secrets so serious that prosecution will be abandoned. To eliminate this threat requires a rethinking of the law governing employee disclosures.

In the second place, there is something inherently unsettling about Congress's solemnly reenacting espionage statutes whose meaning everyone concedes is uncertain. Moreover, the partisans for one view or the other of current statutory coverage are unlikely to restrain their impulse to load the legislative history in a manner favorable to their construction. It did not help reception of S. 1437 that while the statute itself reenacted current espionage law, its accompanying committee report characterized the content of that law in one-sided terms.

How would we go about revising current law? The history of espionage legislation suggests that the primary hazard in formulating legal standards is in treating all revelations of information together in broad general provisions. Although spying, breaches of secrecy by government employees, and public speech about defense matters by the press and the citizenry at large present essentially similar dangers to security interests, the hazards of prohibition and zealous enforcement are very different. Above all, legitimate social values which militate against a strict policy of punishing public disclosures calls for separating these three aspects of the secrecy problem. The consequence of lumping them together can only be unnecessary difficulties in prosecuting spies, dialectical extremes in the interpretation of the legal status of government employees, and utter confusion in the rules applicable to publishers and the rest of us.

A. SPYING

The essence of classical espionage is putting one's access to defense or other secrets at the disposal of foreign government or factions. We see relatively little reason to worry about overboard prohibitions of such activities, although innocent cases can be imagined. **Accordingly, we would define espionage offenses more broadly than present law. Existing law requires that the strategic significance of information involved in espionage prosecutions be ventilated in open trials in the effort to prove that information relates to the national defense. This requirement can itself lead to significant breaches of legitimate secrecy interests, a consideration which may be strong enough to abort prosecution. That a spy might gain immunity from prosecution because the secrets retailed to a foreign agent are so vital that their significance cannot be disclosed in court is an outcome which should be avoided to the extent possible. Moreover, we believe this problem is better met by changing the substantive law to eliminate the need to prove the significance of security breaches, rather than by trying to create novel procedures for closed trials, secret hearings from which a defendant or his counsel of choice may be excluded, or other questionable inroads on traditional notions of open public criminal trials. We believe, therefore, that knowing unauthorized transfer or classified information to agents of a foreign government should be an offense, without requiring the government to persuade the judge or jury that classification was proper.**

We would not, however, give the much-abused power to classify unquestioned effect, even in prosecutions for classical espionage. **At the least, the Director of Central Intelligence and the Attorney General should be required to certify to the District Judge that the information allegedly transmitted to a foreign power was properly classified and not in the public domain. If Congress still remains concerned to bar espionage prosecutions for transmitting trivial or public information, the prosecutor could be required to satisfy the trial judge, in camera, that the classification involved does not represent an abuse of discretion. The aim of the proceeding would not be to determine whether classification is proper de novo, but rather to check arbitrary espionage prosecutions. In addition, of course, the seriousness of the breach of security might be one consideration made material in sentencing proceedings. If the information does not on its face seem significant, and the government chooses not to disclose its importance, then the sentencing court may judge the offense a minor one.**

If the defense significance of classified information is not to be a major element of the espionage offense as we would draw it, one result is that **fair administration would depend on determining correctly whether the recipients of the information are in fact foreign agents. Such problems can, we think, be minimized by insistence on the actor's awareness that his disclosures are intended for primary use by foreign political organizations.**

We would not add further culpability requirements to the spying offenses, other than requiring knowing transmission of classified information. To condition these offenses on "intent to harm the United States," as the Brown Commission recommended, creates numerous problems. In much spying against the United States, the person revealing secrets does not aim to harm the United States, and in some cases, he or she may not even believe that harm will result. The ideological spy can urge in good faith that his revelations are designed to advance the interests of the United States by bringing it under a different political system. Spies interested in pecuniary gain may plausibly claim that the information selected for transfer was harmless, or already known to the foreign government involved, or some such. **Persons who engage in unauthorized delivery of classified information to foreign powers should not be given such defenses to fall back on, in our opinion.** No significant social purposes are served by limiting spying offenses to purpose, knowledge, or even recklessness with respect to harm to the United States.

One other problem deserves mention in connection with prohibitions directed at classical espionage. **Because we would not condition spying offenses on any culpability requirement beyond knowing transmission of classified information, a government employee who reveals classified information to a foreign agent in the course of negotiations or other proper contacts must be protected. We suggest a defense of good faith belief in authority to reveal.** The espionage offense we recommend would accordingly comprehend the essence of the present offense applicable to government employees found in 50 U.S.C. 783(b), but would apply to all persons who covertly transfer such information.

Offenses dealing with classical espionage should be broadly defined where actual spying is involvd. But more important is the point that statutes geared to spying should be limited to that activity, and should not incorporate by design, or slop over by inadvertence, the distinct problems of disclosures by government employees or discussion by newspapers or other publishers.

B. GOVERNMENT EMPLOYEES

Whether Government employees should ever be held criminally responsible for unauthorized public disclosure of national defense secrets is a serious policy problem. A number of considerations argue against it. First, such disclosures frequently inform the public about national policy. Officials responsible for national defense policy commonly attempt to structure perception of the issues involved so as to generate support for the policies they espouse. To expect officials to be neutral and forthcoming with facts is unrealistic. An important counterweight to this tendency for public debate about defense issues to be skewed by selective revelation of supporting facts is the opportunity of opponents to ventilate their side of the story by disclosing other, and possible secret, information. Effective criminal penalties in this area would therefore limit public knowledge of and participation in policy formation, and would also block an important extra-official channel of communication within government.

Second, criminal prosecution for employee disclosure will be seriously contemplated only in the most unusual cases, because the "leak" is the tool not only of those aggrieved by decisions, but also of those in charge of policy who wish to test public response to contemplated policy changes. Prosecution for a "leak" is therefore likely to seem selective and discriminatory, and will outrage especially those who sympathize with the defendant's stance on the policy matter in dispute.

Third, employees who wrongly disclose secrets can without question be dismissed from government service, and effectively ostracized from further participation in official policy-making. That penalty may be sufficiently serious to make necessary further sanctions.

Despite these weighty considerations, we believe there is room in the criminal law for limited penalties directed at wrongful disclosure of defense secrets by government employees, not covered by the spying offenses discussed above. There can be no question of the enormous harm that such disclosure can cause, particularly in such sensitive areas as cryptographic processes. Moreover, failure to protect secrecy can result, paradoxically, in the increase in secrecy in

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policy formation. If the legal order legitimates the view that respect for secrecy is only a matter of political commitment, the likely response of decision-makers will be to make secrets available to only a few trusted subordinates. Thus, the law's failure to give weight to security considerations will augment the tendency to centralize power into fewer hands.

While on balance we favor prohibitions on some unauthorized publications, the First Amendment and sound conceptions of policy favor very narrow coverage. Our central disagreement with earlier proposed Codes is that the information protected against unauthorized public revelation by government employees should be considerably more narrow than that protected against espionage. Failure to do this is likely to have one of two baneful consequences. Either the courts will feel pressed to narrow the scope of espionage prohibitions in order to sustain the constitutionality of offenses in the employee publication context, or, more likely, courts in espionage cases will stretch the definition of defense information far past the point appropriate for triggering penalties for public speech by employees. The two types of offenses should be separated. Government employees, in our view, should be exposed to criminal liability only if they reveal—a term which should be defined to exclude material already in the public domain—properly classified national defense information bearing upon very narrow categories of information concerning weapons systems, military and defense planning, and foreign intelligence sources and methods of current utility. To define these categories of security secrets requires extensive experience in the management of national security affairs, and we are not competent to do it.

This coverage is, of course, much narrower than that we would extend to espionage. For disclosures to persons not known to be agents of foreign governments, an employee should be able to litigate fully the propriety of classification, and, in addition, contend that even if properly classified, information was not of important strategic or intelligence significance. Classification, even when proper, can easily be used as a shield against embarrassment or a weapon for partisan political advantage. Even thus limited, however, there are two general situations where disclosure, although harmful to some conceptions of security, serves the public interest. To accommodate one of these, we would make available a statutory defense to protect unauthorized disclosure to any member of a Congressional Committee having competence over the matter in question. In addition, Congress should recognize that the First Amendment may require that a defendant be given the chance to justify his otherwise criminal disclosure on the ground that the information had significance for public debate that outweighed any likely consequence for national security. To anticipate this possibility, Congress may wish to provide that all questions of law, statutory and constitutional, may be heard in camera if the prosecutor persuades the District Judge that an open hearing might compromise legitimate security considerations.

C. PUBLICATION OF DEFENSE INFORMATION

The third and most sensitive problem that revision confronts is how to treat public discussion of defense matters by the press and other persons not employed by the government. We believe the press and other non-employees should have wider rights to disclose and discuss defense information than should government employees who have learned secrets in their official capacities upon an understanding that security would be maintained. Former Congresses struck the balance between the social value and the adverse security consequences of disclosures in favor of public debate in all doubtful cases, no doubt in part because they wished for Congress itself to learn from the press about national defense information necessary for policy-planning. Former Congresses did not have confidence that more than a single elected official had approved whatever policy might be compromised by public disclosure of secrets. Partly in institutional self-interest, the espionage statutes reflected the view that democratic checks on vital questions of national policy depend on public debate through the press.

We believe this Congress should continue to accord high priority to public debate. Only very narrowly drawn categories of defense information of great security significance and, in most cases, little import for public debate, should be prohibited from public revelation. Information about cryptographic techniques, intelligence gathering operations, the design of secret and vital weapons systems, nuclear armaments, and perhaps other narrow and concrete categories of defense or intelligence information are appropriate subjects, in our opinion, for prohibitions on peacetime press disclosure.

Even with prohibitions limited to such narrowly drawn categories of information, however, we believe that a justification defense turning on superceding importance for public debate will be available under the First Amendment. Exceptional situations wil arise where even the most narrow category of defense information should be revealed in the national interest. A publisher should have the right to contend for such a First Amendment justification for public disclosure of any defense secret. Where a publisher or journalist offers such a defense, we believe the defense should be aired in an open, public trial. The problem of "graymail," where a defendant threatens to reveal other, related secrets if prosecuted, is a lesser problem when the defendant is not a government employee with access to numerous security secrets.

CONCLUSION

Current law is not satisfactory in its treatment of espionage, breaches of secrecy by government employees, and public debate about defense policy. Statutes dealing with such complex and significant problems can neither afford ambiguity as to central questions of coverage, nor wholesale protection of secrecy interests at the expense of countervailing values of political discussion. Whether or not the specific approaches we have offered are deemed to have merit, we hope the Subcommittee will agree that a perception of the different problems posed by spying, employee disclosure, and public discussion is the beginning of sound revision of the law concerning national security secrets.

Mr. SCHMIDT. That statement, Mr. Chairman, contains our summary about the problems with existing law, concerning espionage and disclosures of information relating to defense and intelligence matters, and it also contains some suggestions that we would offer for your consideration for reform of the law in this area.

I would like to try to summarize our statement for the subcommittee, but we want to try to answer your questions, if we can, and the subcommittee staff has been kind enough to send us a number of the bills that are before you which we have gone through, and if the subcommittee wants we would be happy to give you our appraisal of the various proposals.

Mr. Chairman, we believe that there are two main problems facing Congress in the area of espionage laws and laws concerning defense and intelligence information. The first problem is the variety of complicated different matters subsumed in the topic. You must deal not only with spying, but also with the fidelity of Government employees to executive policies of secrecy, and third, with the rights and duties of journalists and the rest of us to engage in or refrain from discussing matters that may at once be critical to informed policy choices and yet be harmful to legitimate secrecy interests if disclosed.

Beyond the complexity of these problems, there is the added difficulty that existing law concerning these matters is in a state of extreme confusion, as we see it. The present espionage statutes, we believe, are incomprehensible on the question of publication of defense and intelligence information. Leaks of this sort of information by Government employees are likewise, in our judgment, left in a state of statutory confusion. And the third point about existing law that we would like to make is that as applied to classical espionage, we believe the current statutes are inadequate. In our opinion, the range of information that they protect is much too narrow, and as you have been discussing with Senator Biden, under the current statutes, in proving that spies have violated the law, the Government may be required to show in open court what the harm to security interests has been caused by the

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